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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,459	03/10/2004	Jeffrey Gilbert	GJE-10102/38	4461

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GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C  
 PO BOX 7021  
 TROY, MI 48007-7021

EXAMINER

SMITH, TIMOTHY SCOTT

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/797,459

Applicant(s)

GILBERT, JEFFREY

Examiner

Timothy S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-9, 12, 13, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 5-6, 10-11, and 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-10-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4-16-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

This Office Action represents a non-final first Office Action for the application titled "LAWN WASTE BAG HOLDER," filed March 10, 2004.

### ***Claim Objections***

1. Claim 11 is objected to because of the following informalities: Claim 10 states "The assembly of claim 10 wherein said frame..." Claim 10 should be changed to –The assembly of claim 10 wherein said funnel–. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

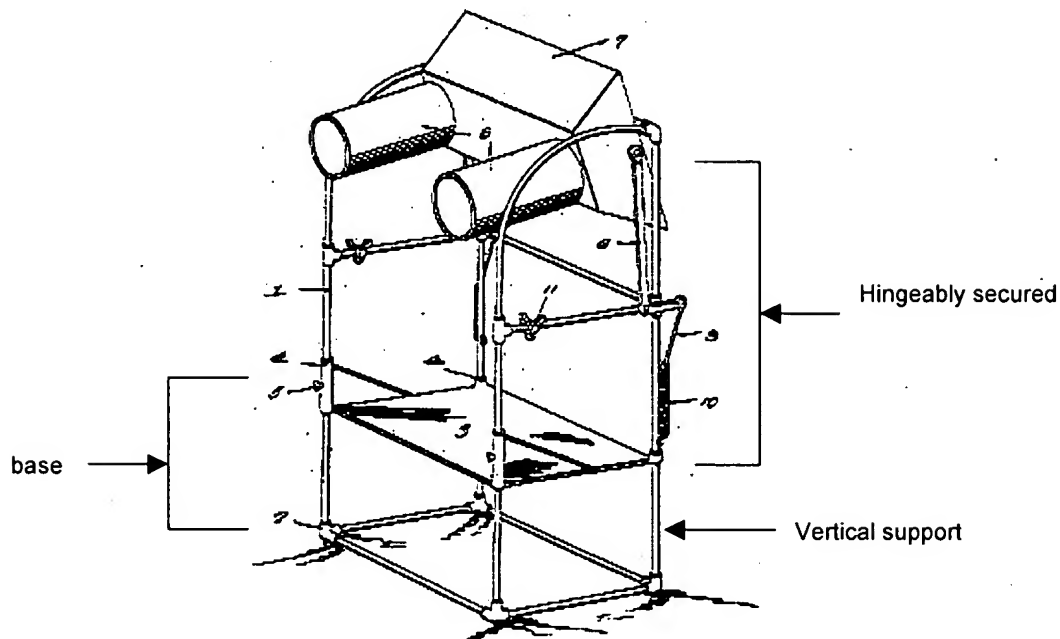
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 7, 9, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,500,964 to Starks.

Starks discloses a yard waste bag support comprising: a polygonal base (see figure) formed of tubular linear pieces (column 1, lines 35-37) joined by elbow fittings (2) having dimensions to accommodate a yard waste bag therein, a plurality of vertical supports extending from said base to a height to accommodate the yard waste bag (see figure below), and a polygonal funnel (7) of unitary construct hingeably secured (see

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figure below) to at least one of said plurality of vertical supports having a mouth greater than the bag opening size.



### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starks (U.S. Patent No. 1,500,964).

In regards to claims 4, and 8 Starks discloses a yard waste bag support as applied to claim 1 above, but Starks does not teach a base having an open side or a funnel being hexagonal; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the base and the funnel to be of various shapes including open sided and hexagonal since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In regards to claim 13, Starks discloses a frame formed of tubular linear pipe sections (column 1, lines 35-37), but does not explicitly disclose that the tubular linear pipe sections are made of plastic; however, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have created the tubular linear pipe sections from plastic because one would have been motivated to provide a lighter and more cost efficient frame.

6. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starks in view of U.S. Patent No. 4,138,139 to Alfonso. Regarding claim 17, Starks discloses the yard waste bag support as applied to claim 1 above, but does not teach a wheel rotatably secured to a base. Alfonso discloses a yard waste bag support having wheels (70,72) rotatably connected to a base (see figure1). In view of Alfonso, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the base of Starks to include a wheel or wheels rotatably secured to the base wherein doing so would allow the yard waste bag support to be easily moved. Regarding claim 18, Starks discloses the yard waste bag support as applied to claim 1

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above as well as a bag support (3) secured to the base, but does not teach a screen bag support secured to said base. Alfonso discloses a yard waste bag support having a screen bag support (76) secured to a base (see figure 1). In view of Alfonso, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the base of Starks to include a screen bag support secured to the base since the screen is an equivalent means for supporting the bottom of a yard waste bag.

### ***Allowable Subject Matter***

7. Claims 5-6, 10-11, and 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter.

Regarding claim 5, the prior art failed to teach a funnel comprising a support frame and a fabric wall supported from said frame.

Regarding claim 10, the prior art failed to teach a funnel having a first side that is hinged and is supported on at least one side not adjacent to said first side.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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U.S. Pat. Nos. 296,135 to Oole, 568,253 to Howard, 2,720,341 to Stirn et al., 3,142,465 to Hellner, 4,202,521 to Harding, 4,273,167 to Stillwell, 4,705,246 to Wolf, 5,048,778 to Wright, 5,183,226 to Brooks, 5,544,781 to Mattesky, 5,868,364 to MacMillan, 6,076,782 to Alderman, 6,116,548 to Oleson, 6,135,518 to Holthaus, and 6,293,505 to Fan.


The above references disclose bag holders relevant to the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Smith whose telephone number is 571-272-8296. The examiner can normally be reached on M-F: 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

TSS

Timothy S. Smith  
Patent Examiner  
Art Unit 3632  
August 22, 2005

  
RAMON O. RAMIREZ  
PRIMARY EXAMINER